



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

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1909 K Street, N.W.
Washington, D.C. 20006-1101

JUL 18 2006

RE: MUR 5765
Crop Production Services, Inc.
Thomas Warner
Alan Steele
Denny Horstman
Duane Mol

Dear Messrs. Kriesberg and Lewis:

On June 20, 2006, the Federal Election Commission found that there is reason to believe Crop Production Services, Inc. and Thomas Warner each violated 2 U.S.C. §§ 441b(a) and 441f, provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). Also on that date, the Commission found reason to believe that Alan Steele, Denny Horstman and Duane Mol each violated 2 U.S.C. § 441f. These findings were based upon information contained in your submissions dated September 16, 2005, September 27, 2005, March 9, 2006, and March 14, 2006, and information ascertained in the normal course of carrying out the Commission's supervisory responsibilities. *See* 2 U.S.C. § 437g(a)(2). The Factual and Legal Analyses, which more fully explain the Commission's findings, are attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519.

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Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Mark Allen, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Michael E. Toner
Chairman

Enclosures
Factual and Legal Analyses
Procedures

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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 RESPONDENT: Crop Production Services, Inc.

MUR 5765

4
5 **I. INTRODUCTION**

6 Through its counsel, Crop Production Services, Inc. ("CPS"), an agricultural products
7 company based in Galesburg, Illinois, made a voluntary submission notifying the Federal
8 Election Commission ("Commission") that CPS appeared to have violated the Federal Election
9 Campaign Act of 1971, as amended (the "Act"), by using corporate funds to reimburse the
10 contributions of six individuals totaling \$43,305.¹ These six individuals included a CPS vice
11 president, his spouse, three CPS managers and one of their spouses. The activity described by
12 CPS occurred during the period 2001-2003. All the reimbursed contributions were made to the
13 Agricultural Retailers Association Political Action Committee ("ARA-PAC").²

14 As more fully set forth below, it appears that CPS contributed \$43,305 to ARA-PAC
15 through several employees. The Commission therefore finds reason to believe that CPS violated
16 2 U.S.C. §§ 441b(a) and 441f.

17 **II. FACTUAL AND LEGAL ANALYSIS**

18 **A. Summary of Information Submitted by CPS**

19 CPS initially submitted a brief overview of the activity, followed up by additional
20 submissions fleshing out the contributions, the reimbursements, and CPS's actions since it
21 discovered the reimbursements. CPS states that the subject reimbursements came to light on

¹ CPS is a retailing subsidiary of Agrium US, Inc., whose parent company is Agrium, Inc., a Canadian corporation. CPS's submissions do not indicate any role in the reimbursed contributions on the part of Agrium, Inc. or any foreign national individuals. See 2 U.S.C. § 441e; 11 C.F.R. § 110.20.

² ARA-PAC is a separate segregated fund of the Agricultural Retailers Association.

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1 September 1, 2005, when a list of ARA-PAC contributors, taken from the Commission's
2 website, was called to the attention of CPS's Chief Executive Officer, Richard Gearheard. The
3 contribution list included four CPS employees and the spouses of two of the employees. The list
4 indicated that some of the contributors appeared to have exceeded the annual limit on individual
5 contributions to political committees. Upon receiving this information, CPS states that it, along
6 with its parent corporation, Agrium US, Inc., hired outside counsel to "look into the matter to
7 confirm that CPS was in full compliance with the law." As CPS and outside counsel investigated
8 further, it came to light that several of the contributors to ARA-PAC had been reimbursed by
9 CPS. At that time, CPS states, it "immediately began taking steps to unwind the transactions in
10 their entirety, with a view toward returning all involved parties to their *status quo ante*
11 financially." On September 16, 2005, CPS filed its submission with the Commission.³

12 **1. Contributions and Reimbursements**

13 The reimbursed contributions are set forth in the following table.⁴

14

<u>Contributor Name</u>	<u>Amount</u>	<u>Contribution Date</u>	<u>Occupation</u>
Alan Steele	\$7,800	12/07/01	CPS manager
Thomas Warner	\$5,550	01/10/03	CPS vice president
Debra Warner	\$5,550	01/10/03	spouse
Thomas Warner	\$7,805	12/23/03	CPS vice president
Alan Steele	\$5,000	12/23/03	CPS manager
Nancy Steele	\$4,600	12/23/03	spouse
Denny Horstman	\$2,900	12/23/03	CPS manager
Duane Mol	\$4,100	12/23/03	CPS manager

15

³ CPS states that it took these steps "[b]ased on informal guidance acquired from the staff at the FEC's Information Division."

⁴ Several of the identified reimbursed contributions exceeded the applicable \$5,000 calendar year contribution limit for individuals to non-candidate, non-party committees. See 2 U.S.C. § 441a(a)(1)(C). Since these contributions were reimbursed by CPS, the fact that the contributions exceeded the individuals' limits is not the subject of Commission findings here.

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1 According to CPS, it reimbursed the six individuals for items they purchased at auctions
2 sponsored by ARA-PAC at the Agricultural Retailers Association Annual Conference and
3 Exposition in December 2001, December 2002⁵ and December 2003. At each auction, ARA-
4 PAC offered up for bidding an array of agricultural supplies and equipment, among other things.
5 CPS employees bid on and won certain items at the auctions, with the expectation that the items
6 would be used by CPS in its business. According to CPS, the employees then sought and
7 received payments from CPS in order to pay for the amounts of their winning bids and, in three
8 instances, for additional \$100 cash donations the employees made to ARA-PAC.⁶ Shortly after
9 receiving these payments from CPS, the employees contributed the funds to ARA-PAC. These
10 contributions and the CPS payments that reimbursed the contributions are set forth in detail
11 below.

12 According to CPS, the employee reimbursements were all approved by Thomas Warner,
13 then a CPS vice president and currently president of CPS. The reimbursements were
14 accomplished through the use of CPS Orders for Payment, which list the employee's name in the
15 "To" field, the equipment or materials purchased in the ARA-PAC auction in the "Payment Is
16 For" field, and contain what appears to be Warner's signature in the "Approved By" field. No
17 other signatures appear on the forms. The Orders for Payment also state "Reimbursement" in the
18 "No." field for the December 2001 and January 2003 contribution reimbursements, and state
19 "ARAPAC Auction" in this field for the December 2003 contribution reimbursements.

⁵ The reimbursed contributions related to the December 2002 auction were disclosed by ARA-PAC as received in January 2003.

⁶ The contributions on December 23, 2003 by Alan Steele, Denny Horstman and Duane Mol each included \$100 in cash. This amount is the maximum permitted cash contribution. See 2 U.S.C. § 441g; 11 C.F.R. § 110.4(c)(1).

1 CPS reimbursed the contributors using corporate checks.⁷ In the case of the
2 reimbursements of Thomas Warner's contributions, however, CPS did not directly reimburse
3 him. Instead, CPS reimbursed Warner through Alan Steele. Specifically, CPS issued an \$11,100
4 check to Steele dated December 10, 2002, which he signed over to Warner to reimburse Thomas
5 and Debra Warner's \$5,550 contributions to ARA-PAC in January 2003. In addition, CPS
6 issued a \$16,850 check to Steele dated December 9, 2003 to reimburse Thomas Warner's
7 December 2003 contribution, as well as Alan and Nancy Steele's December 2003 contributions.
8 CPS states that Alan Steele subsequently paid Warner \$7,250 of the \$16,850 to reimburse him.⁸

9 Within a few days after the employees were provided the reimbursements by CPS, they
10 made their contributions to ARA-PAC by personal check and transferred their auction items to
11 CPS for use in its business. On most occasions, CPS says, it later traded the items back to the
12 equipment and supply companies who initially donated them for the auction, in exchange for
13 credits or other business products of equivalent value. On a few occasions, CPS made use of the
14 actual auction items.

15 2. Refunds and Repayments

16 As noted, CPS states that the subject reimbursements came to light on September 1, 2005.
17 Less than two weeks later, on September 14, 2005, CPS Chief Executive Officer, Richard
18 Gearheard, sent written directives to each of the four reimbursed CPS employees, listing the

⁷ CPS's reimbursement checks to Horstman and Mol exceeded the amount of their contributions, where CPS reimbursed the contributions as well as other expenses.

⁸ The difference between this \$7,250 reimbursement to Thomas Warner and the amount of his \$7,805 contribution dated December 23, 2003, is \$555 that CPS reimbursed directly by check to Debra Warner relating to her \$555 bid at the ARA-PAC auction for a floral arrangement and retirement gift cufflinks. CPS's reimbursement check payable to Debra Warner, like those to other contributors noted above, was for an amount greater than the contribution.

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1 reimbursed contributions, explaining that the reimbursements are unlawful and must be paid
2 back in full to CPS as soon as possible, asking the employees to report to Gearheard any
3 additional reimbursed contributions, and stating that the company is in the process of drafting
4 correspondence for the employees' use in apprising ARA-PAC of the illegal nature of the
5 contributions and the PAC's legal obligation to refund the contributions.⁹

6 Two days later, on September 16, 2005, CPS provided letters to the four reimbursed
7 employees to use to notify ARA-PAC of the likely illegal nature of their contributions; the letters
8 advise ARA-PAC of its obligation under federal law to disgorge and return these illegal
9 contributions within 30 days, citing 11 C.F.R. § 103.3(b)(2). On September 19, 2005, the four
10 reimbursed CPS employees sent such letters to ARA-PAC.¹⁰

11 On September 21, 2005, ARA-PAC issued refunds to the four reimbursed CPS
12 employees and the two spouses. The PAC refunded only a portion of the contributions,
13 however;¹¹ the remaining portion of the contributions were refunded a few days later, on
14 September 30, 2005, from a separate ARA account used for administrative expenses.¹² Together,

⁹ The contributions identified in Gearheard's letters correspond to the reimbursement checks issued by CPS. Thus, his letter to Alan Steele attributes to Steele the contributions made by Steele as well as those made by Thomas Warner. Similarly, Gearheard's letter to Thomas Warner lists only the \$555 reimbursement to Debra Warner. *See supra* footnote 8.

¹⁰ CPS provided the Commission with a copy of Alan Steele's letter to ARA-PAC, which is dated September 18, 2005 and cc's CEO Gearheard. Steele's letter identifies his December 2001 contribution and his and his wife's December 2003 contributions; the letter does not mention the contributions by Thomas Warner for which Steele was reimbursed by CPS.

¹¹ ARA-PAC disclosed the partial refunds on its October 2005 monthly report.

¹² The cover letters from both ARA-PAC and the ARA explain that portions of the contributions at issue had been disbursed by the PAC into the ARA administrative account, and thus the refunds came from both places. Specifically, ARA-PAC refunded to the contributors the amounts of the contributions that had remained in the ARA-PAC account, and the ARA administrative account refunded those portions that had been disbursed by the PAC into the administrative account.

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1 these refunds match the total amounts of the reimbursed contributions by the four CPS
2 employees and the two spouses, as summarized in the table below.

<u>Contributors</u>	<u>Total Contributions</u>	<u>Refunds from ARA-PAC</u>	<u>Refunds from ARA Admin Account</u>	<u>Total Refunds</u>
Denny Horstman	\$ 2,900.00	\$1,333.33	\$ 1,566.67	\$ 2,900.00
Duane Mol	\$ 4,100.00	\$ 393.33	\$ 3,706.67	\$ 4,100.00
Al and Nancy Steele	\$17,400.00	\$4,766.67	\$12,633.33	\$17,400.00
Thomas and Debra Warner	\$18,905.00	\$9,521.67	\$ 9,383.33	\$18,905.00

3
4 Finally, the reimbursed employees wrote checks to CPS to repay the reimbursements.
5 These checks range in date from September 18, 2005 to October 11, 2005.¹³ At this point, it
6 appears that CPS, the four employees and two spouses, and ARA-PAC have all been returned to
7 their *status quo ante* financially.

8 **3. Additional Actions Taken by Crop Production Services, Inc.**

9 In addition to the steps outlined above, CPS states that it took the following actions:

- 10
11 • After CEO Richard Gearheard wrote to the four reimbursed employees, he met personally
12 with each of them “to fully impress upon them the impropriety of their actions, and the
13 extent to which they had placed the entire corporation in jeopardy of being subjected to
14 enforcement proceedings and liability.” Gearheard also “reinforced with each of them
15 that they were required to fully repay the corporation all of the reimbursements they had
16 received, and that the corporation would require them to do so regardless of whether they
17 were reimbursed by ARA-PAC.” In addition, the CEO and Chairman of CPS’s parent
18 corporation, Agrium, spoke with Thomas Warner regarding what he had done, and the
19 matter was reported to the company’s Audit Committee.
20
21 • CEO Gearheard addressed a memorandum to Thomas Warner and to Gordon Miller, vice
22 president of Western Farm Services, Inc., another subsidiary of Agrium, dated
23 November 18, 2005 on the subject of “Donations.” After setting forth budgeted amounts
24 for charitable donations, the memorandum states that no donations will be reimbursed to

¹³ The checks from Steele and Warner match their reimbursements from CPS, which as noted above do not match their contributions because the reimbursements to Warner were routed through Steele. Accordingly, Steele’s repayment to CPS is \$35,750 and Warner’s repayment is \$555, the latter check signed by Debra Warner. Although not specified by CPS, Thomas Warner presumably paid to Steele \$18,350, an amount equivalent to that Steele had earlier paid to Warner out of the reimbursement checks Steele received from CPS.

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1 employees and, “[a]s a reminder, absolutely no donations may be made to political action
2 committees, candidates or political parties. Corporate donations to these organizations
3 are illegal.”

- 4
5 • CPS refunded to the equipment and supply companies the value of auction items CPS
6 received at the time of the contributions. CPS paid a total of \$39,345.00 to four
7 companies for the value of the items, payments or credits CPS received.

8
9 Further, CPS has provided to the Commission a copy of the Agrium Code of Business Conduct,

10 which prohibits unauthorized use of corporate assets to make political contributions.

11 Specifically, employees:

12 must not contribute any funds or assets of Agrium to any political party or
13 organization nor to any individual who holds or is seeking public office, except
14 where such contribution has been authorized by the Board of Directors or by a
15 committee of the Board or is in accordance with the company’s political donations
16 policy and budget.

17
18 This Code is re-circulated to all employees at the beginning of each year with the requirement
19 that they certify they have complied with its provisions in the preceding year; CPS has provided
20 the most recent certification package which was sent to employees covering the year 2005.¹⁴

21 Finally, CPS requests that “[i]n light of the prompt, concrete actions the company is
22 taking to address these isolated, unintentional violations . . . the Commission take no action
23 against CPS.” Alternatively, CPS adds, should the Commission determine to take action
24 regarding the company, the company “hope[s] that [its] voluntary, good faith efforts to remedy
25 this situation will not go unnoted.”

26 **B. Liability of CPS**

27 CPS’s submissions demonstrate that it used corporate funds to reimburse employee

¹⁴ CPS has not provided to the Commission certifications dating from the period during which the reimbursements took place.

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1 contributions to ARA-PAC and that its then-vice president Thomas Warner approved these
2 reimbursements. Under the Act, corporations are prohibited from making contributions or
3 expenditures from their general treasury funds in connection with any election of any candidate
4 for federal office. 2 U.S.C. § 441b(a). Corporate officers are prohibited from consenting to such
5 contributions. *Id.* The Act also provides that no person shall make a contribution in the name of
6 another person or knowingly permit his or her name to be used to effect such a contribution.
7 2 U.S.C. § 441f. In addition, no person may knowingly help or assist any person in making a
8 contribution in the name of another. 11 C.F.R. § 110.4(b)(1)(iii).

9 CPS, by reimbursing the individual contributors, appears to have made corporate
10 contributions in the names of the individuals, and so there is reason to believe that CPS violated
11 2 U.S.C. §§ 441b(a) and 441f.

12 Because section 441f violations are usually knowing and willful, the issue necessarily
13 arises whether the apparent violations here were knowing and willful. The phrase “knowing and
14 willful” indicates that “actions [were] taken with full knowledge of all of the facts and a
15 recognition that the action is prohibited by law.” 122 Cong. Rec. H3778 (daily ed. May 3, 1976).
16 A knowing and willful violation may be established “by proof that the defendant acted deliberately
17 and with knowledge that the representation was false.” *United States v. Hopkins*, 916 F.2d 207,
18 214 (5th Cir. 1990).

19 In other *sua sponte* matters involving reimbursed contributions, the Commission has
20 considered factors such as whether the available information indicated that respondents were aware
21 that their conduct was illegal, whether respondents were fully forthcoming in their submissions,
22 and the timing of respondents’ notice to federal authorities. In MUR 5628 (AMEC), respondents

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1 asserted that the violations were not knowing and willful, despite the absence of written records,
2 which suggested that respondents intentionally disguised their corporate political contributions.
3 See MUR 5628 First General Counsel's Report at 2-3. Respondents had also not been fully
4 forthcoming with relevant information despite two requests. See *id.* at 3, 11. Consequently, the
5 Commission found reason to believe that respondents knowingly and willfully violated 2 U.S.C.
6 §§ 441b(a) and 441f.

7 By contrast, in MUR 5643 (Carter's Inc.), the *sua sponte* submission was complete, the
8 available information indicated that respondents were unaware that their conduct was illegal, and
9 respondents revealed the violation of the law to federal authorities as soon as it was discovered and
10 had taken steps to remedy the violation. See MUR 5643 First General Counsel's Report at 2, 5.
11 Under these circumstances, the Commission did not find reason to believe that respondents had
12 knowingly and willfully violated the Act. See also MUR 5357 (Centex) (the Commission did not
13 make any knowing and willful reason to believe findings); MUR 5398 (Lifecare) (the Commission
14 made knowing and willful reason to believe findings regarding the two corporate executives who
15 disguised the reimbursements as bonuses but did not make knowing and willful reason to believe
16 findings regarding the corporation or several conduits).

17 In the present matter, CPS describes the "possible violations" as "unknowing and
18 unintended." CPS has provided substantial information, and the company revealed the apparent
19 violations of the law to the Commission shortly after they were discovered and then quickly took
20 steps to remedy the violations. Moreover, CPS internal documents do not indicate that the
21 company attempted to disguise the reimbursements, but rather expressly described the payments on

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- 1 Orders for Payment as “Reimbursement” and “ARAPAC Auction.”¹⁵ Under these circumstances,
2 the Commission is not at this time finding that the violations were knowing and willful.

¹⁵ CPS describes ARA-PAC literature regarding the auctions as “somewhat confusing information regarding the permissibility of receipt of corporate funds by the PAC.” Such literature states:

ARAPAC may only accept contributions from ARA members. Payment in the form of a personal or a Limited Liability Company check or credit card (LLC must be taxed as a partnership) is preferred for auction items and/or contributions. Federal law stipulates that individuals may not receive reimbursement from a corporation for personal funds contributed to the ARAPAC.

Donations made by corporate check and individual contributions in excess of federal limits will be accepted to pay for the administrative expenses of the PAC and non-candidate related political activities. These funds are also helpful to the association.

This matter, however, does not involve CPS providing corporate checks directly to ARA-PAC.

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1 **FEDERAL ELECTION COMMISSION**
2 **FACTUAL AND LEGAL ANALYSIS**

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4 **RESPONDENT:** Thomas Warner

MUR 5765

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7 **I. INTRODUCTION**

8 This matter was generated by the Federal Election Commission (“Commission”) pursuant
9 to information ascertained in the normal course of carrying out its supervisory responsibilities.

10 The available information indicates that Crop Production Services, Inc. (“CPS”), an agricultural
11 products company based in Galesburg, Illinois, used corporate funds to reimburse the
12 contributions of six individuals totaling \$43,305.¹ These six individuals included Thomas
13 Warner, then-CPS vice president, his spouse, three CPS managers and one of their spouses. The
14 activity occurred during the period 2001-2003. All the reimbursed contributions were made to
15 the Agricultural Retailers Association Political Action Committee (“ARA-PAC”).²

16 As more fully set forth below, it appears that Thomas Warner, a corporate officer, by
17 approving the corporate reimbursements, consented to the corporate contributions, and
18 knowingly permitted his own name to be used to effect contributions in the name of another, in
19 violation of 2 U.S.C. §§ 441b(a) and 441f, provisions of the Federal Election Campaign Act of
20 1971, as amended (“the Act”).

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¹ CPS is a retailing subsidiary of Agrium US, Inc., whose parent company is Agrium, Inc., a Canadian corporation.

² ARA-PAC is a separate segregated fund of the Agricultural Retailers Association.

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1 **II. FACTUAL AND LEGAL ANALYSIS**

2 **A. Summary of Information**

3 **1. Contributions and Reimbursements**

4 The reimbursed contributions are set forth in the following table.³

5

<u>Contributor Name</u>	<u>Amount</u>	<u>Contribution Date</u>	<u>Occupation</u>
Alan Steele	\$7,800	12/07/01	CPS manager
Thomas Warner	\$5,550	01/10/03	CPS vice president
Debra Warner	\$5,550	01/10/03	spouse
Thomas Warner	\$7,805	12/23/03	CPS vice president
Alan Steele	\$5,000	12/23/03	CPS manager
Nancy Steele	\$4,600	12/23/03	spouse
Denny Horstman	\$2,900	12/23/03	CPS manager
Duane Mol	\$4,100	12/23/03	CPS manager

6 The available information indicates that CPS reimbursed the six individuals for items
7 they purchased at auctions sponsored by ARA-PAC at the Agricultural Retailers Association
8 Annual Conference and Exposition in December 2001, December 2002⁴ and December 2003. At
9 each auction, ARA-PAC offered up for bidding an array of agricultural supplies and equipment,
10 among other things. CPS employees bid on and won certain items at the auctions, with the
11 expectation that the items would be used by CPS in its business. The available information
12 indicates that the employees then sought and received payments from CPS in order to pay for the
13 amounts of their winning bids and, in three instances, for additional \$100 cash donations the
14

³ Several of the identified reimbursed contributions exceeded the applicable \$5,000 calendar year contribution limit for individuals to non-candidate, non-party committees. See 2 U.S.C. § 441a(a)(1)(C). Since these contributions were reimbursed by CPS, the fact that the contributions exceeded the individuals' limits is not the subject of Commission findings here.

⁴ The reimbursed contributions related to the December 2002 auction were disclosed by ARA-PAC as received in January 2003.

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1 employees made to ARA-PAC.⁵ Shortly after receiving these payments from CPS, the
2 employees contributed the funds to ARA-PAC. These contributions and the CPS payments that
3 reimbursed the contributions are set forth in detail below.

4 The available information indicates that the employee reimbursements were all approved
5 by Thomas Warner, then a CPS vice president and currently president of CPS. The
6 reimbursements were accomplished through the use of CPS Orders for Payment, which list the
7 employee's name in the "To" field, the equipment or materials purchased in the ARA-PAC
8 auction in the "Payment Is For" field, and contain what appears to be Warner's signature in the
9 "Approved By" field. No other signatures appear on the forms. The Orders for Payment also
10 state "Reimbursement" in the "No." field for the December 2001 and January 2003 contribution
11 reimbursements, and state "ARAPAC Auction" in this field for the December 2003 contribution
12 reimbursements.

13 CPS reimbursed the contributors using corporate checks.⁶ In the case of the
14 reimbursements of Thomas Warner's contributions, however, CPS did not directly reimburse
15 him. Instead, CPS reimbursed Warner through Alan Steele. Specifically, CPS issued an \$11,100
16 check to Steele dated December 10, 2002, which he signed over to Warner to reimburse Thomas
17 and Debra Warner's \$5,550 contributions to ARA-PAC in January 2003. In addition, CPS
18 issued a \$16,850 check to Steele dated December 9, 2003 to reimburse Thomas Warner's
19

⁵ The contributions on December 23, 2003 by Alan Steele, Denny Horstman and Duane Mol each included \$100 in cash. This amount is the maximum permitted cash contribution See 2 U.S.C. § 441g; 11 C.F.R. § 110.4(c)(1).

⁶ CPS's reimbursement checks to Horstman and Mol exceeded the amount of their contributions, where CPS reimbursed the contributions as well as other expenses.

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1 December 2003 contribution, as well as Alan and Nancy Steele's December 2003 contributions.
2 Alan Steele subsequently paid Warner \$7,250 of the \$16,850 to reimburse him.⁷

3 Within a few days after the employees were provided the reimbursements by CPS, they
4 made their contributions to ARA-PAC by personal check and transferred their auction items to
5 CPS for use in its business.

6 **2. Refunds and Repayments**

7 The available information indicates that the subject reimbursements came to light at CPS
8 on September 1, 2005. Less than two weeks later, on September 14, 2005, CPS Chief Executive
9 Officer, Richard Gearheard, sent written directives to each of the four reimbursed CPS
10 employees, listing the reimbursed contributions, explaining that the reimbursements are unlawful
11 and must be paid back in full to CPS as soon as possible, asking the employees to report to
12 Gearheard any additional reimbursed contributions, and stating that the company is in the process
13 of drafting correspondence for the employees' use in apprising ARA-PAC of the illegal nature of
14 the contributions and the PAC's legal obligation to refund the contributions.⁸

15 Two days later, on September 16, 2005, CPS provided letters to the four reimbursed
16 employees to use to notify ARA-PAC of the likely illegal nature of their contributions; the letters
17 advise ARA-PAC of its obligation under federal law to disgorge and return these illegal

⁷ The difference between this \$7,250 reimbursement to Thomas Warner and the amount of his \$7,805 contribution dated December 23, 2003, is \$555 that CPS reimbursed directly by check to Debra Warner relating to her \$555 bid at the ARA-PAC auction for a floral arrangement and retirement gift cufflinks. CPS's reimbursement check payable to Debra Warner, like those to other contributors noted above, was for an amount greater than the contribution.

⁸ The contributions identified in Gearheard's letters correspond to the reimbursement checks issued by CPS. Thus, his letter to Alan Steele attributes to Steele the contributions made by Steele as well as those made by Thomas Warner. Similarly, Gearheard's letter to Thomas Warner lists only the \$555 reimbursement to Debra Warner. *See supra* footnote 7.

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1 contributions within 30 days, citing 11 C.F.R. § 103.3(b)(2). On September 19, 2005, the four
2 reimbursed CPS employees sent such letters to ARA-PAC.⁹

3 On September 21, 2005, ARA-PAC issued refunds to the four reimbursed CPS
4 employees and the two spouses. The PAC refunded only a portion of the contributions,
5 however;¹⁰ the remaining portion of the contributions were refunded a few days later, on
6 September 30, 2005, from a separate ARA account used for administrative expenses.¹¹ Together,
7 these refunds match the total amounts of the reimbursed contributions by the four CPS
8 employees and the two spouses, as summarized in the table below.

<u>Contributors</u>	<u>Total Contributions</u>	<u>Refunds from ARA-PAC</u>	<u>Refunds from ARA Admin Account</u>	<u>Total Refunds</u>
Thomas and Debra Warner	\$18,905.00	\$9,521.67	\$ 9,383.33	\$18,905.00
Denny Horstman	\$ 2,900.00	\$1,333.33	\$ 1,566.67	\$ 2,900.00
Duane Mol	\$ 4,100.00	\$ 393.33	\$ 3,706.67	\$ 4,100.00
Al and Nancy Steele	\$17,400.00	\$4,766.67	\$12,633.33	\$17,400.00

9
10 Finally, the reimbursed employees wrote checks to CPS to repay the reimbursements.
11 These checks range in date from September 18, 2005 to October 11, 2005.¹² At this point, it

⁹ Alan Steele's letter to ARA-PAC, which is dated September 18, 2005 and cc's CEO Gearheard, identifies his December 2001 contribution and his and his wife's December 2003 contributions; the letter does not mention the contributions by Thomas Warner for which Steele was reimbursed by CPS.

¹⁰ ARA-PAC disclosed the partial refunds on its October 2005 monthly report.

¹¹ The cover letters from both ARA-PAC and the ARA explain that portions of the contributions at issue had been disbursed by the PAC into the ARA administrative account, and thus the refunds came from both places. Specifically, ARA-PAC refunded to the contributors the amounts of the contributions that had remained in the ARA-PAC account, and the ARA administrative account refunded those portions that had been disbursed by the PAC into the administrative account.

¹² The checks from Steele and Warner match their reimbursements from CPS, which as noted above do not match their contributions because the reimbursements to Warner were routed through Steele. Accordingly, Steele's repayment to CPS is \$35,750 and Warner's repayment is \$555, the latter check signed by Debra Warner. Thomas Warner presumably paid to Steele \$18,350, an amount equivalent to that Steele had earlier paid to Warner out of the reimbursement checks Steele received from CPS.

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1 appears that CPS, the four employees and two spouses, and ARA-PAC have all been returned to
2 their *status quo ante* financially.

3 **B. Liability of Thomas Warner**

4 The available information indicates that CPS used corporate funds to reimburse employee
5 contributions to ARA-PAC and that its then-vice president Thomas Warner approved these
6 reimbursements. Under the Act, corporations are prohibited from making contributions or
7 expenditures from their general treasury funds in connection with any election of any candidate
8 for federal office. 2 U.S.C. § 441b(a). Corporate officers are prohibited from consenting to such
9 contributions. *Id.* The Act also provides that no person shall make a contribution in the name of
10 another person or knowingly permit his or her name to be used to effect such a contribution.
11 2 U.S.C. § 441f. In addition, no person may knowingly help or assist any person in making a
12 contribution in the name of another. 11 C.F.R. § 110.4(b)(1)(iii).

13 Thomas Warner, a corporate officer, by approving the corporate reimbursements,
14 consented to the corporate contributions, and knowingly permitted his own name to be used to
15 effect contributions in the name of another. Accordingly, there is reason to believe that Thomas
16 Warner violated 2 U.S.C. §§ 441b(a) and 441f.

17 Because section 441f violations are usually knowing and willful, the issue necessarily
18 arises whether the apparent violations here were knowing and willful. The phrase “knowing and
19 willful” indicates that “actions [were] taken with full knowledge of all of the facts and a
20 recognition that the action is prohibited by law.” 122 Cong. Rec. H3778 (daily ed. May 3, 1976).
21 A knowing and willful violation may be established “by proof that the defendant acted deliberately

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1 and with knowledge that the representation was false.” *United States v. Hopkins*, 916 F.2d 207,
2 214 (5th Cir. 1990).

3 In other *sua sponte* matters involving reimbursed contributions, the Commission has
4 considered factors such as whether the available information indicated that respondents were aware
5 that their conduct was illegal, whether respondents were fully forthcoming in their submissions,
6 and the timing of respondents’ notice to federal authorities. In MUR 5628 (AMEC), respondents
7 asserted that the violations were not knowing and willful, despite the absence of written records,
8 which suggested that respondents intentionally disguised their corporate political contributions.
9 See MUR 5628 First General Counsel’s Report at 2-3. Respondents had also not been fully
10 forthcoming with relevant information despite two requests. See *id.* at 3, 11. Consequently, the
11 Commission found reason to believe that respondents knowingly and willfully violated 2 U.S.C.
12 §§ 441b(a) and 441f.

13 By contrast, in MUR 5643 (Carter’s Inc.), the *sua sponte* submission was complete, the
14 available information indicated that respondents were unaware that their conduct was illegal, and
15 respondents revealed the violation of the law to federal authorities as soon as it was discovered and
16 had taken steps to remedy the violation. See MUR 5643 First General Counsel’s Report at 2, 5.
17 Under these circumstances, the Commission did not find reason to believe that respondents had
18 knowingly and willfully violated the Act. See also MUR 5357 (Centex) (the Commission did not
19 make any knowing and willful reason to believe findings); MUR 5398 (Lifecare) (the Commission
20 made knowing and willful reason to believe findings regarding the two corporate executives who
21 disguised the reimbursements as bonuses but did not make knowing and willful reason to believe
22 findings regarding the corporation or several conduits).

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1 In the present matter, there is no information available at this time indicating that Thomas
2 Warner was involved in a scheme to disguise the reimbursements; rather, the payments on the CPS
3 Orders for Payment were expressly described as "Reimbursement" and "ARAPAC Auction."¹³
4 Moreover, substantial information has been provided to the Commission, and steps have been
5 quickly taken to remedy the violations. Under these circumstances, the Commission is not at this
6 time finding that the violations were knowing and willful.

¹³ ARA-PAC literature describing the auctions states:

ARAPAC may only accept contributions from ARA members. Payment in the form of a personal or a Limited Liability Company check or credit card (LLC must be taxed as a partnership) is preferred for auction items and/or contributions. Federal law stipulates that individuals may not receive reimbursement from a corporation for personal funds contributed to the ARAPAC.

Donations made by corporate check and individual contributions in excess of federal limits will be accepted to pay for the administrative expenses of the PAC and non-candidate related political activities. These funds are also helpful to the association.

This matter, however, does not involve CPS providing corporate checks directly to ARA-PAC.

27044161131

1 **FEDERAL ELECTION COMMISSION**
2 **FACTUAL AND LEGAL ANALYSIS**
3

4 RESPONDENT: Alan Steele

MUR 5765

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7 **I. INTRODUCTION**

8 This matter was generated by the Federal Election Commission (“Commission”) pursuant
9 to information ascertained in the normal course of carrying out its supervisory responsibilities.
10 The available information indicates that Crop Production Services, Inc. (“CPS”), an agricultural
11 products company based in Galesburg, Illinois, used corporate funds to reimburse the
12 contributions of six individuals totaling \$43,305.¹ These six individuals included Alan Steele, a
13 CPS manager, his spouse, two other CPS managers, a CPS vice president and his spouse. The
14 activity occurred during the period 2001-2003. All the reimbursed contributions were made to
15 the Agricultural Retailers Association Political Action Committee (“ARA-PAC”).²

16 As more fully set forth below, it appears that Alan Steele knowingly permitted his name
17 to be used to effect contributions in the name of another, in violation of 2 U.S.C. § 441f, a
18 provision of the Federal Election Campaign Act of 1971, as amended (“the Act”).
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¹ CPS is a retailing subsidiary of Agrium US, Inc., whose parent company is Agrium, Inc., a Canadian corporation.

² ARA-PAC is a separate segregated fund of the Agricultural Retailers Association.

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1 **II. FACTUAL AND LEGAL ANALYSIS**

2 **A. Summary of Information**

3 **1. Contributions and Reimbursements**

4 The reimbursed contributions are set forth in the following table.³

5

<u>Contributor Name</u>	<u>Amount</u>	<u>Contribution Date</u>	<u>Occupation</u>
Alan Steele	\$7,800	12/07/01	CPS manager
Thomas Warner	\$5,550	01/10/03	CPS vice president
Debra Warner	\$5,550	01/10/03	spouse
Thomas Warner	\$7,805	12/23/03	CPS vice president
Alan Steele	\$5,000	12/23/03	CPS manager
Nancy Steele	\$4,600	12/23/03	spouse
Denny Horstman	\$2,900	12/23/03	CPS manager
Duane Mol	\$4,100	12/23/03	CPS manager

6
7 The available information indicates that CPS reimbursed the six individuals for items
8 they purchased at auctions sponsored by ARA-PAC at the Agricultural Retailers Association
9 Annual Conference and Exposition in December 2001, December 2002⁴ and December 2003. At
10 each auction, ARA-PAC offered up for bidding an array of agricultural supplies and equipment,
11 among other things. CPS employees bid on and won certain items at the auctions, with the
12 expectation that the items would be used by CPS in its business. The available information
13 indicates that the employees then sought and received payments from CPS in order to pay for the
14 amounts of their winning bids and, in three instances, for additional \$100 cash donations the

³ Several of the identified reimbursed contributions exceeded the applicable \$5,000 calendar year contribution limit for individuals to non-candidate, non-party committees. See 2 U.S.C. § 441a(a)(1)(C). Since these contributions were reimbursed by CPS, the fact that the contributions exceeded the individuals' limits is not the subject of Commission findings here.

⁴ The reimbursed contributions related to the December 2002 auction were disclosed by ARA-PAC as received in January 2003.

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1 employees made to ARA-PAC.⁵ Shortly after receiving these payments from CPS, the
2 employees contributed the funds to ARA-PAC. These contributions and the CPS payments that
3 reimbursed the contributions are set forth in detail below.

4 The available information indicates that the employee reimbursements were all approved
5 by Thomas Warner, then a CPS vice president and currently president of CPS. The
6 reimbursements were accomplished through the use of CPS Orders for Payment, which list the
7 employee's name in the "To" field, the equipment or materials purchased in the ARA-PAC
8 auction in the "Payment Is For" field, and contain what appears to be Warner's signature in the
9 "Approved By" field. No other signatures appear on the forms. The Orders for Payment also
10 state "Reimbursement" in the "No." field for the December 2001 and January 2003 contribution
11 reimbursements, and state "ARAPAC Auction" in this field for the December 2003 contribution
12 reimbursements.

13 CPS reimbursed the contributors using corporate checks. In the case of the
14 reimbursements of Thomas Warner's contributions, however, CPS did not directly reimburse
15 him. Instead, CPS reimbursed Warner through Alan Steele. Specifically, CPS issued an \$11,100
16 check to Steele dated December 10, 2002, which he signed over to Warner to reimburse Thomas
17 and Debra Warner's \$5,550 contributions to ARA-PAC in January 2003. In addition, CPS
18 issued a \$16,850 check to Steele dated December 9, 2003 to reimburse Thomas Warner's

⁵ The contribution on December 23, 2003 by Alan Steele included \$100 in cash. This amount is the maximum permitted cash contribution. See 2 U.S.C. § 441g; 11 C.F.R. § 110.4(c)(1).

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1 December 2003 contribution, as well as Alan and Nancy Steele's December 2003 contributions.
2 Alan Steele subsequently paid Warner \$7,250 of the \$16,850 to reimburse him.⁶

3 Within a few days after the employees were provided the reimbursements by CPS, they
4 made their contributions to ARA-PAC by personal check and transferred their auction items to
5 CPS for use in its business.

6 **2. Refunds and Repayments**

7 The available information indicates that the subject reimbursements came to light at CPS
8 on September 1, 2005. Less than two weeks later, on September 14, 2005, CPS Chief Executive
9 Officer, Richard Gearheard, sent written directives to each of the four reimbursed CPS
10 employees, listing the reimbursed contributions, explaining that the reimbursements are unlawful
11 and must be paid back in full to CPS as soon as possible, asking the employees to report to
12 Gearheard any additional reimbursed contributions, and stating that the company is in the process
13 of drafting correspondence for the employees' use in apprising ARA-PAC of the illegal nature of
14 the contributions and the PAC's legal obligation to refund the contributions.⁷

15 Two days later, on September 16, 2005, CPS provided letters to the four reimbursed
16 employees to use to notify ARA-PAC of the likely illegal nature of their contributions; the letters
17 advise ARA-PAC of its obligation under federal law to disgorge and return these illegal

⁶ The difference between this \$7,250 reimbursement to Thomas Warner and the amount of his \$7,805 contribution dated December 23, 2003, is \$555 that CPS reimbursed directly by check to Debra Warner relating to her \$555 bid at the ARA-PAC auction for a floral arrangement and retirement gift cufflinks.

⁷ The contributions identified in Gearheard's letters correspond to the reimbursement checks issued by CPS. Thus, his letter to Alan Steele attributes to Steele the contributions made by Steele as well as those made by Thomas Warner. Similarly, Gearheard's letter to Thomas Warner lists only the \$555 reimbursement to Debra Warner. *See supra* footnote 6.

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1 contributions within 30 days, citing 11 C.F.R. § 103.3(b)(2). On September 19, 2005, the four
2 reimbursed CPS employees sent such letters to ARA-PAC.⁸

3 On September 21, 2005, ARA-PAC issued refunds to the four reimbursed CPS
4 employees and the two spouses. The PAC refunded only a portion of the contributions,
5 however;⁹ the remaining portion of the contributions were refunded a few days later, on
6 September 30, 2005, from a separate ARA account used for administrative expenses.¹⁰ Together,
7 these refunds match the total amounts of the reimbursed contributions by the four CPS
8 employees and the two spouses, as summarized in the table below.

<u>Contributors</u>	<u>Total Contributions</u>	<u>Refunds from ARA-PAC</u>	<u>Refunds from ARA Admn Account</u>	<u>Total Refunds</u>
Al and Nancy Steele	\$17,400.00	\$4,766.67	\$12,633.33	\$17,400.00
Thomas and Debra Warner	\$18,905.00	\$9,521.67	\$ 9,383.33	\$18,905.00
Denny Horstman	\$ 2,900.00	\$1,333.33	\$ 1,566.67	\$ 2,900.00
Duane Mol	\$ 4,100.00	\$ 393.33	\$ 3,706.67	\$ 4,100.00

9
10 Finally, the reimbursed employees wrote checks to CPS to repay the reimbursements.
11 These checks range in date from September 18, 2005 to October 11, 2005.¹¹ At this point, it

⁸ Alan Steele's letter to ARA-PAC, which is dated September 18, 2005 and cc's CEO Gearheard, identifies his December 2001 contribution and his and his wife's December 2003 contributions; the letter does not mention the contributions by Thomas Warner for which Steele was reimbursed by CPS.

⁹ ARA-PAC disclosed the partial refunds on its October 2005 monthly report.

¹⁰ The cover letters from both ARA-PAC and the ARA explain that portions of the contributions at issue had been disbursed by the PAC into the ARA administrative account, and thus the refunds came from both places. Specifically, ARA-PAC refunded to the contributors the amounts of the contributions that had remained in the ARA-PAC account, and the ARA administrative account refunded those portions that had been disbursed by the PAC into the administrative account.

¹¹ The checks from Steele and Warner match their reimbursements from CPS, which as noted above do not match their contributions because the reimbursements to Warner were routed through Steele. Accordingly, Steele's repayment to CPS is \$35,750 and Warner's repayment is \$555, the latter check signed by Debra Warner. Thomas Warner presumably paid to Steele \$18,350, an amount equivalent to that Steele had earlier paid to Warner out of the reimbursement checks Steele received from CPS.

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1 appears that CPS, the four employees and two spouses, and ARA-PAC have all been returned to
2 their *status quo ante* financially.

3 **B. Liability of Alan Steele**

4 The available information indicates that CPS used corporate funds to reimburse employee
5 contributions to ARA-PAC. Under the Act, no person shall make a contribution in the name of
6 another person or knowingly permit his or her name to be used to effect such a contribution.
7 2 U.S.C. § 441f. In addition, no person may knowingly help or assist any person in making a
8 contribution in the name of another. 11 C.F.R. § 110.4(b)(1)(iii).

9 Alan Steele appears to have knowingly permitted his name to be used to effect
10 contributions in the name of another. Accordingly, there is reason to believe that Alan Steele
11 violated 2 U.S.C. § 441f.

12 Because section 441f violations are usually knowing and willful, the issue necessarily
13 arises whether the apparent violations here were knowing and willful. The phrase “knowing and
14 willful” indicates that “actions [were] taken with full knowledge of all of the facts and a
15 recognition that the action is prohibited by law.” 122 Cong. Rec. H3778 (daily ed. May 3, 1976).
16 A knowing and willful violation may be established “by proof that the defendant acted deliberately
17 and with knowledge that the representation was false.” *United States v. Hopkins*, 916 F.2d 207,
18 214 (5th Cir. 1990).

19 In other *sua sponte* matters involving reimbursed contributions, the Commission has
20 considered factors such as whether the available information indicated that respondents were aware
21 that their conduct was illegal, whether respondents were fully forthcoming in their submissions,

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1 and the timing of respondents' notice to federal authorities. In MUR 5628 (AMEC), respondents
2 asserted that the violations were not knowing and willful, despite the absence of written records,
3 which suggested that respondents intentionally disguised their corporate political contributions.
4 See MUR 5628 First General Counsel's Report at 2-3. Respondents had also not been fully
5 forthcoming with relevant information despite two requests. See *id.* at 3, 11. Consequently, the
6 Commission found reason to believe that respondents knowingly and willfully violated 2 U.S.C.
7 §§ 441b(a) and 441f.

8 By contrast, in MUR 5643 (Carter's Inc.), the *sua sponte* submission was complete, the
9 available information indicated that respondents were unaware that their conduct was illegal, and
10 respondents revealed the violation of the law to federal authorities as soon as it was discovered and
11 had taken steps to remedy the violation. See MUR 5643 First General Counsel's Report at 2, 5.
12 Under these circumstances, the Commission did not find reason to believe that respondents had
13 knowingly and willfully violated the Act. See also MUR 5357 (Centex) (the Commission did not
14 make any knowing and willful reason to believe findings); MUR 5398 (Lifecare) (the Commission
15 made knowing and willful reason to believe findings regarding the two corporate executives who
16 disguised the reimbursements as bonuses but did not make knowing and willful reason to believe
17 findings regarding the corporation or several conduits).

18 In the present matter, there is no information available at this time indicating that Alan
19 Steele was involved in a scheme to disguise the reimbursements; rather, the payments on the CPS
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- 1 Orders for Payment were expressly described as "Reimbursement" and "ARAPAC Auction."¹²
- 2 Moreover, substantial information has been provided to the Commission, and steps have been
- 3 quickly taken to remedy the violations. Under these circumstances, the Commission is not at this
- 4 time finding that the violation was knowing and willful.

¹² ARA-PAC literature describing the auctions states:

ARAPAC may only accept contributions from ARA members. Payment in the form of a personal or a Limited Liability Company check or credit card (LLC must be taxed as a partnership) is preferred for auction items and/or contributions. Federal law stipulates that individuals may not receive reimbursement from a corporation for personal funds contributed to the ARAPAC.

Donations made by corporate check and individual contributions in excess of federal limits will be accepted to pay for the administrative expenses of the PAC and non-candidate related political activities. These funds are also helpful to the association.

This matter, however, does not involve CPS providing corporate checks directly to ARA-PAC.

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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3
4 RESPONDENT: Denny Horstman

MUR 5765

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7 **I. INTRODUCTION**

8 This matter was generated by the Federal Election Commission (“Commission”) pursuant
9 to information ascertained in the normal course of carrying out its supervisory responsibilities.

10 The available information indicates that Crop Production Services, Inc. (“CPS”), an agricultural
11 products company based in Galesburg, Illinois, used corporate funds to reimburse the
12 contributions of six individuals totaling \$43,305.¹ These six individuals included Denny
13 Horstman, a CPS manager, two other CPS managers and one of their spouses, and a CPS vice
14 president and his spouse. The activity occurred during the period 2001-2003. All the reimbursed
15 contributions were made to the Agricultural Retailers Association Political Action Committee
16 (“ARA-PAC”).²

17 As more fully set forth below, it appears that Denny Horstman knowingly permitted his
18 name to be used to effect contributions in the name of another, in violation of 2 U.S.C. § 441f, a
19 provision of the Federal Election Campaign Act of 1971, as amended (“the Act”).
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¹ CPS is a retailing subsidiary of Agrium US, Inc., whose parent company is Agrium, Inc., a Canadian corporation.

² ARA-PAC is a separate segregated fund of the Agricultural Retailers Association.

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1 **II. FACTUAL AND LEGAL ANALYSIS**

2 **A. Summary of Information**

3 **1. Contributions and Reimbursements**

4 The reimbursed contributions are set forth in the following table.
5

<u>Contributor Name</u>	<u>Amount</u>	<u>Contribution Date</u>	<u>Occupation</u>
Alan Steele	\$7,800	12/07/01	CPS manager
Thomas Warner	\$5,550	01/10/03	CPS vice president
Debra Warner	\$5,550	01/10/03	spouse
Thomas Warner	\$7,805	12/23/03	CPS vice president
Alan Steele	\$5,000	12/23/03	CPS manager
Nancy Steele	\$4,600	12/23/03	spouse
Denny Horstman	\$2,900	12/23/03	CPS manager
Duane Mol	\$4,100	12/23/03	CPS manager

6
7 The available information indicates that CPS reimbursed the six individuals for items
8 they purchased at auctions sponsored by ARA-PAC at the Agricultural Retailers Association
9 Annual Conference and Exposition in December 2001, December 2002³ and December 2003. At
10 each auction, ARA-PAC offered up for bidding an array of agricultural supplies and equipment,
11 among other things. CPS employees bid on and won certain items at the auctions, with the
12 expectation that the items would be used by CPS in its business. The available information
13 indicates that the employees then sought and received payments from CPS in order to pay for the
14 amounts of their winning bids and, in three instances, for additional \$100 cash donations the
15 employees made to ARA-PAC.⁴ Shortly after receiving these payments from CPS, the

³ The reimbursed contributions related to the December 2002 auction were disclosed by ARA-PAC as received in January 2003.

⁴ The contribution on December 23, 2003 by Denny Horstman included \$100 in cash. This amount is the maximum permitted cash contribution. See 2 U.S.C. § 441g; 11 C.F.R. § 110.4(c)(1).

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1 employees contributed the funds to ARA-PAC. These contributions and the CPS payments that
2 reimbursed the contributions are set forth in detail below.

3 The available information indicates that the employee reimbursements were all approved
4 by Thomas Warner, then a CPS vice president and currently president of CPS. The
5 reimbursements were accomplished through the use of CPS Orders for Payment, which list the
6 employee's name in the "To" field, the equipment or materials purchased in the ARA-PAC
7 auction in the "Payment Is For" field, and contain what appears to be Warner's signature in the
8 "Approved By" field. No other signatures appear on the forms. The Orders for Payment also
9 state "Reimbursement" in the "No." field for the December 2001 and January 2003 contribution
10 reimbursements, and state "ARAPAC Auction" in this field for the December 2003 contribution
11 reimbursements.

12 CPS reimbursed the contributors using corporate checks.⁵ Within a few days after the
13 employees were provided the reimbursements by CPS, they made their contributions to ARA-
14 PAC by personal check and transferred their auction items to CPS for use in its business.

15 2. Refunds and Repayments

16 The available information indicates that the subject reimbursements came to light at CPS
17 on September 1, 2005. Less than two weeks later, on September 14, 2005, CPS Chief Executive
18 Officer, Richard Gearheard, sent written directives to each of the four reimbursed CPS
19 employees, listing the reimbursed contributions, explaining that the reimbursements are unlawful
20 and must be paid back in full to CPS as soon as possible, asking the employees to report to

⁵ CPS's reimbursement check to Denny Horstman exceeded the amount of his contribution, where CPS reimbursed the contribution as well as other expenses.

1 Gearheard any additional reimbursed contributions, and stating that the company is in the process
2 of drafting correspondence for the employees' use in apprising ARA-PAC of the illegal nature of
3 the contributions and the PAC's legal obligation to refund the contributions.

4 Two days later, on September 16, 2005, CPS provided letters to the four reimbursed
5 employees to use to notify ARA-PAC of the likely illegal nature of their contributions; the letters
6 advise ARA-PAC of its obligation under federal law to disgorge and return these illegal
7 contributions within 30 days, citing 11 C.F.R. § 103.3(b)(2). On September 19, 2005, the four
8 reimbursed CPS employees sent such letters to ARA-PAC.

9 On September 21, 2005, ARA-PAC issued refunds to the four reimbursed CPS
10 employees and the two spouses. The PAC refunded only a portion of the contributions,
11 however;⁶ the remaining portion of the contributions were refunded a few days later, on
12 September 30, 2005, from a separate ARA account used for administrative expenses.⁷ Together,
13 these refunds match the total amounts of the reimbursed contributions by the four CPS
14 employees and the two spouses, as summarized in the table below.

<u>Contributors</u>	<u>Total Contributions</u>	<u>Refunds from ARA-PAC</u>	<u>Refunds from ARA Admin Account</u>	<u>Total Refunds</u>
Denny Horstman	\$ 2,900.00	\$1,333.33	\$ 1,566.67	\$ 2,900.00
Duane Mol	\$ 4,100.00	\$ 393.33	\$ 3,706.67	\$ 4,100.00
Al and Nancy Steele	\$17,400.00	\$4,766.67	\$12,633.33	\$17,400.00
Thomas and Debra Warner	\$18,905.00	\$9,521.67	\$ 9,383.33	\$18,905.00

⁶ ARA-PAC disclosed the partial refunds on its October 2005 monthly report.

⁷ The cover letters from both ARA-PAC and the ARA explain that portions of the contributions at issue had been disbursed by the PAC into the ARA administrative account, and thus the refunds came from both places. Specifically, ARA-PAC refunded to the contributors the amounts of the contributions that had remained in the ARA-PAC account, and the ARA administrative account refunded those portions that had been disbursed by the PAC into the administrative account.

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1 Finally, the reimbursed employees wrote checks to CPS to repay the reimbursements.
2 These checks range in date from September 18, 2005 to October 11, 2005. At this point, it
3 appears that CPS, the four employees and two spouses, and ARA-PAC have all been returned to
4 their *status quo ante* financially.

5 **B. Liability of Denny Horstman**

6 The available information indicates that CPS used corporate funds to reimburse employee
7 contributions to ARA-PAC. Under the Act, no person shall make a contribution in the name of
8 another person or knowingly permit his or her name to be used to effect such a contribution.
9 2 U.S.C. § 441f. In addition, no person may knowingly help or assist any person in making a
10 contribution in the name of another. 11 C.F.R. § 110.4(b)(1)(iii).

11 Denny Horstman appears to have knowingly permitted his name to be used to effect
12 contributions in the name of another. Accordingly, there is reason to believe that Denny
13 Horstman violated 2 U.S.C. § 441f.

14 Because section 441f violations are usually knowing and willful, the issue necessarily
15 arises whether the apparent violations here were knowing and willful. The phrase “knowing and
16 willful” indicates that “actions [were] taken with full knowledge of all of the facts and a
17 recognition that the action is prohibited by law.” 122 Cong. Rec. H3778 (daily ed. May 3, 1976).
18 A knowing and willful violation may be established “by proof that the defendant acted deliberately
19 and with knowledge that the representation was false.” *United States v. Hopkins*, 916 F.2d 207,
20 214 (5th Cir. 1990).

21 In other *sua sponte* matters involving reimbursed contributions, the Commission has
22 considered factors such as whether the available information indicated that respondents were aware

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1 that their conduct was illegal, whether respondents were fully forthcoming in their submissions,
2 and the timing of respondents' notice to federal authorities. In MUR 5628 (AMEC), respondents
3 asserted that the violations were not knowing and willful, despite the absence of written records,
4 which suggested that respondents intentionally disguised their corporate political contributions.
5 See MUR 5628 First General Counsel's Report at 2-3. Respondents had also not been fully
6 forthcoming with relevant information despite two requests. See *id.* at 3, 11. Consequently, the
7 Commission found reason to believe that respondents knowingly and willfully violated 2 U.S.C.
8 §§ 441b(a) and 441f.

9 By contrast, in MUR 5643 (Carter's Inc.), the *sua sponte* submission was complete, the
10 available information indicated that respondents were unaware that their conduct was illegal, and
11 respondents revealed the violation of the law to federal authorities as soon as it was discovered and
12 had taken steps to remedy the violation. See MUR 5643 First General Counsel's Report at 2, 5.
13 Under these circumstances, the Commission did not find reason to believe that respondents had
14 knowingly and willfully violated the Act. See also MUR 5357 (Centex) (the Commission did not
15 make any knowing and willful reason to believe findings); MUR 5398 (Lifecare) (the Commission
16 made knowing and willful reason to believe findings regarding the two corporate executives who
17 disguised the reimbursements as bonuses but did not make knowing and willful reason to believe
18 findings regarding the corporation or several conduits).

19 In the present matter, there is no information available at this time indicating that Denny
20 Horstman was involved in a scheme to disguise the reimbursements; rather, the payments on the
21
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- 1 CPS Orders for Payment were expressly described as "Reimbursement" and "ARAPAC Auction."⁸
- 2 Moreover, substantial information has been provided to the Commission, and steps have been
- 3 quickly taken to remedy the violations. Under these circumstances, the Commission is not at this
- 4 time finding that the violation was knowing and willful.

⁸ ARA-PAC literature describing the auctions states:

ARAPAC may only accept contributions from ARA members. Payment in the form of a personal or a Limited Liability Company check or credit card (LLC must be taxed as a partnership) is preferred for auction items and/or contributions. Federal law stipulates that individuals may not receive reimbursement from a corporation for personal funds contributed to the ARAPAC.

Donations made by corporate check and individual contributions in excess of federal limits will be accepted to pay for the administrative expenses of the PAC and non-candidate related political activities. These funds are also helpful to the association.

This matter, however, does not involve CPS providing corporate checks directly to ARA-PAC.

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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

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4 RESPONDENT: Duane Mol

MUR 5765

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7 **I. INTRODUCTION**

8 This matter was generated by the Federal Election Commission (“Commission”) pursuant
9 to information ascertained in the normal course of carrying out its supervisory responsibilities.

10 The available information indicates that Crop Production Services, Inc. (“CPS”), an agricultural
11 products company based in Galesburg, Illinois, used corporate funds to reimburse the
12 contributions of six individuals totaling \$43,305.¹ These six individuals included Duane Mol, a
13 CPS manager, two other CPS managers and one of their spouses, and a CPS vice president and
14 his spouse. The activity occurred during the period 2001-2003. All the reimbursed contributions
15 were made to the Agricultural Retailers Association Political Action Committee (“ARA-PAC”).²

16 As more fully set forth below, it appears that Duane Mol knowingly permitted his name
17 to be used to effect contributions in the name of another, in violation of 2 U.S.C. § 441f, a
18 provision of the Federal Election Campaign Act of 1971, as amended (“the Act”).

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¹ CPS is a retailing subsidiary of Agrium US, Inc., whose parent company is Agrium, Inc., a Canadian corporation.

² ARA-PAC is a separate segregated fund of the Agricultural Retailers Association.

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1 **II. FACTUAL AND LEGAL ANALYSIS**

2 **A. Summary of Information**

3 **1. Contributions and Reimbursements**

4 The reimbursed contributions are set forth in the following table.
5

<u>Contributor Name</u>	<u>Amount</u>	<u>Contribution Date</u>	<u>Occupation</u>
Alan Steele	\$7,800	12/07/01	CPS manager
Thomas Warner	\$5,550	01/10/03	CPS vice president
Debra Warner	\$5,550	01/10/03	spouse
Thomas Warner	\$7,805	12/23/03	CPS vice president
Alan Steele	\$5,000	12/23/03	CPS manager
Nancy Steele	\$4,600	12/23/03	spouse
Denny Horstman	\$2,900	12/23/03	CPS manager
Duane Mol	\$4,100	12/23/03	CPS manager

6
7 The available information indicates that CPS reimbursed the six individuals for items
8 they purchased at auctions sponsored by ARA-PAC at the Agricultural Retailers Association
9 Annual Conference and Exposition in December 2001, December 2002³ and December 2003. At
10 each auction, ARA-PAC offered up for bidding an array of agricultural supplies and equipment,
11 among other things. CPS employees bid on and won certain items at the auctions, with the
12 expectation that the items would be used by CPS in its business. The available information
13 indicates that the employees then sought and received payments from CPS in order to pay for the
14 amounts of their winning bids and, in three instances, for additional \$100 cash donations the
15 employees made to ARA-PAC.⁴ Shortly after receiving these payments from CPS, the

³ The reimbursed contributions related to the December 2002 auction were disclosed by ARA-PAC as received in January 2003.

⁴ The contribution on December 23, 2003 by Duane Mol included \$100 in cash. This amount is the maximum permitted cash contribution. See 2 U.S.C. § 441g; 11 C.F.R. § 110.4(c)(1).

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1 employees contributed the funds to ARA-PAC. These contributions and the CPS payments that
2 reimbursed the contributions are set forth in detail below.

3 The available information indicates that the employee reimbursements were all approved
4 by Thomas Warner, then a CPS vice president and currently president of CPS. The
5 reimbursements were accomplished through the use of CPS Orders for Payment, which list the
6 employee's name in the "To" field, the equipment or materials purchased in the ARA-PAC
7 auction in the "Payment Is For" field, and contain what appears to be Warner's signature in the
8 "Approved By" field. No other signatures appear on the forms. The Orders for Payment also
9 state "Reimbursement" in the "No." field for the December 2001 and January 2003 contribution
10 reimbursements, and state "ARAPAC Auction" in this field for the December 2003 contribution
11 reimbursements.

12 CPS reimbursed the contributors using corporate checks.⁵ Within a few days after the
13 employees were provided the reimbursements by CPS, they made their contributions to ARA-
14 PAC by personal check and transferred their auction items to CPS for use in its business.

15 2. Refunds and Repayments

16 The available information indicates that the subject reimbursements came to light at CPS
17 on September 1, 2005. Less than two weeks later, on September 14, 2005, CPS Chief Executive
18 Officer, Richard Gearheard, sent written directives to each of the four reimbursed CPS
19 employees, listing the reimbursed contributions, explaining that the reimbursements are unlawful
20 and must be paid back in full to CPS as soon as possible, asking the employees to report to

⁵ CPS's reimbursement check to Duane Mol exceeded the amount of his contribution, where CPS reimbursed the contribution as well as other expenses.

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1 Gearheard any additional reimbursed contributions, and stating that the company is in the process
2 of drafting correspondence for the employees' use in apprising ARA-PAC of the illegal nature of
3 the contributions and the PAC's legal obligation to refund the contributions.

4 Two days later, on September 16, 2005, CPS provided letters to the four reimbursed
5 employees to use to notify ARA-PAC of the likely illegal nature of their contributions; the letters
6 advise ARA-PAC of its obligation under federal law to disgorge and return these illegal
7 contributions within 30 days, citing 11 C.F.R. § 103.3(b)(2). On September 19, 2005, the four
8 reimbursed CPS employees sent such letters to ARA-PAC.

9 On September 21, 2005, ARA-PAC issued refunds to the four reimbursed CPS
10 employees and the two spouses. The PAC refunded only a portion of the contributions,
11 however;⁶ the remaining portion of the contributions were refunded a few days later, on
12 September 30, 2005, from a separate ARA account used for administrative expenses.⁷ Together,
13 these refunds match the total amounts of the reimbursed contributions by the four CPS
14 employees and the two spouses, as summarized in the table below.

<u>Contributors</u>	<u>Total Contributions</u>	<u>Refunds from ARA-PAC</u>	<u>Refunds from ARA Admin Account</u>	<u>Total Refunds</u>
Duane Mol	\$ 4,100.00	\$ 393.33	\$ 3,706.67	\$ 4,100.00
Al and Nancy Steele	\$17,400.00	\$4,766.67	\$12,633.33	\$17,400.00
Thomas and Debra Warner	\$18,905.00	\$9,521.67	\$ 9,383.33	\$18,905.00
Denny Horstman	\$ 2,900.00	\$1,333.33	\$ 1,566.67	\$ 2,900.00

⁶ ARA-PAC disclosed the partial refunds on its October 2005 monthly report.

⁷ The cover letters from both ARA-PAC and the ARA explain that portions of the contributions at issue had been disbursed by the PAC into the ARA administrative account, and thus the refunds came from both places. Specifically, ARA-PAC refunded to the contributors the amounts of the contributions that had remained in the ARA-PAC account, and the ARA administrative account refunded those portions that had been disbursed by the PAC into the administrative account.

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1 Finally, the reimbursed employees wrote checks to CPS to repay the reimbursements.
2 These checks range in date from September 18, 2005 to October 11, 2005. At this point, it
3 appears that CPS, the four employees and two spouses, and ARA-PAC have all been returned to
4 their *status quo ante* financially.

5 **B. Liability of Duane Mol**

6 The available information indicates that CPS used corporate funds to reimburse employee
7 contributions to ARA-PAC. Under the Act, no person shall make a contribution in the name of
8 another person or knowingly permit his or her name to be used to effect such a contribution.
9 2 U.S.C. § 441f. In addition, no person may knowingly help or assist any person in making a
10 contribution in the name of another. 11 C.F.R. § 110.4(b)(1)(iii).

11 Duane Mol appears to have knowingly permitted his name to be used to effect
12 contributions in the name of another. Accordingly, there is reason to believe that Duane Mol
13 violated 2 U.S.C. § 441f.

14 Because section 441f violations are usually knowing and willful, the issue necessarily
15 arises whether the apparent violations here were knowing and willful. The phrase “knowing and
16 willful” indicates that “actions [were] taken with full knowledge of all of the facts and a
17 recognition that the action is prohibited by law.” 122 Cong. Rec. H3778 (daily ed. May 3, 1976).
18 A knowing and willful violation may be established “by proof that the defendant acted deliberately
19 and with knowledge that the representation was false.” *United States v. Hopkins*, 916 F.2d 207,
20 214 (5th Cir. 1990).

21 In other *sua sponte* matters involving reimbursed contributions, the Commission has
22 considered factors such as whether the available information indicated that respondents were aware

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1 that their conduct was illegal, whether respondents were fully forthcoming in their submissions,
2 and the timing of respondents' notice to federal authorities. In MUR 5628 (AMEC), respondents
3 asserted that the violations were not knowing and willful, despite the absence of written records,
4 which suggested that respondents intentionally disguised their corporate political contributions.
5 See MUR 5628 First General Counsel's Report at 2-3. Respondents had also not been fully
6 forthcoming with relevant information despite two requests. See *id.* at 3, 11. Consequently, the
7 Commission found reason to believe that respondents knowingly and willfully violated 2 U.S.C.
8 §§ 441b(a) and 441f.

9 By contrast, in MUR 5643 (Carter's Inc.), the *sua sponte* submission was complete, the
10 available information indicated that respondents were unaware that their conduct was illegal, and
11 respondents revealed the violation of the law to federal authorities as soon as it was discovered and
12 had taken steps to remedy the violation. See MUR 5643 First General Counsel's Report at 2, 5.
13 Under these circumstances, the Commission did not find reason to believe that respondents had
14 knowingly and willfully violated the Act. See also MUR 5357 (Centex) (the Commission did not
15 make any knowing and willful reason to believe findings); MUR 5398 (Lifecare) (the Commission
16 made knowing and willful reason to believe findings regarding the two corporate executives who
17 disguised the reimbursements as bonuses but did not make knowing and willful reason to believe
18 findings regarding the corporation or several conduits).

19 In the present matter, there is no information available at this time indicating that Duane
20 Mol was involved in a scheme to disguise the reimbursements; rather, the payments on the CPS
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- 1 Orders for Payment were expressly described as "Reimbursement" and "ARAPAC Auction."⁸
- 2 Moreover, substantial information has been provided to the Commission, and steps have been
- 3 quickly taken to remedy the violations. Under these circumstances, the Commission is not at this
- 4 time finding that the violation was knowing and willful.

⁸ ARA-PAC literature describing the auctions states:

ARAPAC may only accept contributions from ARA members. Payment in the form of a personal or a Limited Liability Company check or credit card (LLC must be taxed as a partnership) is preferred for auction items and/or contributions. Federal law stipulates that individuals may not receive reimbursement from a corporation for personal funds contributed to the ARAPAC.

Donations made by corporate check and individual contributions in excess of federal limits will be accepted to pay for the administrative expenses of the PAC and non-candidate related political activities. These funds are also helpful to the association.

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